

MAR 17 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

BYRON MONCADA ONG,

Plaintiff - Appellant,

v.

WARDEN ANDREWS; et al.,

Defendants - Appellees.

No. 05-16140

D.C. No. CV-F-03-05417-REC

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Robert E. Coyle, District Judge, Presiding

Submitted March 8, 2006^{**}

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges.

Former federal prisoner Byron Moncada Ong appeals pro se from the district court's judgment dismissing his prisoner civil rights action for failure to exhaust administrative remedies. We have jurisdiction pursuant to 28

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

U.S.C. § 1291. We review de novo, *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003), and we affirm.

The district court properly dismissed the action without prejudice because Ong failed to exhaust administrative remedies prior to filing his original complaint. *See McKinney v. Carey*, 311 F.3d 1198, 1199-1200 (9th Cir. 2002) (per curiam) (holding that 42 U.S.C. § 1997e(a) requires dismissal without prejudice where a prisoner has not exhausted administrative remedies prior to filing suit).

AFFIRMED.